

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2079 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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SUNILKUMAR BHUPENDRA T PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR MI HAVA for Petitioners

MRS VK PAREKH, ASSTT. GOVT. PLEADER for Respondent.

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CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 03/04/97

ORAL JUDGEMENT

The petitioners are cultivating agricultural land bearing survey No.309 final plot No.116, 310, final plot No.119 and 392, final plot No.66-B at village Katargam as tenants. It is the case of the petitioners that their

ancestors were agriculturists and had purchased the said land prior to 1948 as tenants and that as the tenancy rights were acquired by the great-grandfather of the petitioners, the property in their hands is joint Hindu property and, accordingly, Form No.1 under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) was filed. It was held that the holding of the petitioners is not in excess than required under the law. The order dated 19.4.1985/19.6.1985 passed by the Competent Authority is produced at Annexure-H page 62. The State Government took the said order in suo moto revision under Section 34 of the Act by issuing notice at Annexure-J page 66 and revised the order declaring 4369 square metres of land as excess land. A copy of the order dated 17.3.1989 is produced at Annexure-K. From the record it appears that the petitioners also filed a review application which was rejected vide order dated 15.4.1995. The petitioners aggrieved by the order of the State Government passed under Section 34 of the Act coupled with the order dated 15.4.1995 passed in the review application have filed this petition.

2. The short question arising for consideration of this court is whether the land in question is ancestral property or self-acquired of the petitioners. On perusal of the impugned order passed by the State Government it appears that the holding of the land by the petitioners had been treated as by an 'association of persons' and thereby has taken as one unit declaring rest as excess holding. In this connection it would be worthwhile to go through the order passed by the Competent Authority at Annexure-H. In this case, the Competent Authority has dealt with in detail about the nature of the property, the source of inheritance, oral partition between co-sharers, effect of a decree passed by a court of competent jurisdiction. Thus, considering all relevant material and evidence the Competent Authority came to the conclusion that the property in question is ancestral property and each of the co-sharers would be entitled to one unit and thus the holding is not in excess of the ceiling limit.

3. Heard Mrs. Parekh, learned Assistant Government Pleader for the respondents. Supporting the impugned order, Mr.Parekh has argued that, according to revenue record, the land stood in the name of deceased Tribhuvandas Pershottamdas who was alive on the date of enforcement of the Act. As he died on 6.8.1976, the authority was justified in considering the holding of the entire land in the individual name of Tribhuvandas Pershottamdas and calculating the unit accordingly. But,

in my view, while deciding the matter, the respondents have overlooked the revenue record, namely, 7/12 extracts, produced on record at Annexure-A (collectively). Annexure-A shows names of ancestors of the petitioners as tenants-in-possession and cultivating the land. The revenue record also shows that there was an oral partition between the co-sharers in 1975. The oral partition between the parties was recognized by the revenue authorities and necessary entries were also made. The say of the petitioners that the property is an ancestral property and that an oral partition was made between the parties on 1.10.1975 has been further fortified by a decree of civil court passed by the Civil Judge (S.D.) at Surat in Special Civil Suit No.74 of 1978. A copy of the said decree is produced on record at Annexure-C. The record also shows that the oral partition dated 1.10.1975 followed by a decree passed in civil suit was implemented and the property physically partitioned as is evident from Annexure-D and that thereafter construction was made thereon. The construction made by individual co-sharer is also regularised by the Collector vide order dated 11.5.1987 at Annexure-G. Grant of permission to make construction suggests that the plans for construction were approved by the Corporation as is evident from Annexure-P page 85. Thus, on the face of record, it appears that the State Government while reviewing the order has overlooked important and relevant material documentary evidence on record. Therefore, the impugned order is arbitrary, without application of mind and de hors the provisions of law and the decree passed by the court of competent jurisdiction.

4. Apart from the aforesaid factual aspect, the impugned order is also contrary to the law declared by this court in the case of CHHAGANLAL TRIKAMDAS THAKKER v. COMPETENT AUTHORITY, RAJKOT reported in 1994 (1) Gujarat Current Decision at page 1 which says that, where an association of individuals is holding any land, question of considering unit would depend upon nature and scope of holding. If the individuals are owning definite and specific shares in the land though acquired through a single source may not come into the ambit of 'association' or 'body of individuals' holding the land. Such individuals are tenants-in-common and cannot be treated as one unit for the purpose of the Act. Thus, on the face of it, the impugned order is not sustainable and is required to be quashed and set aside.

5. In the result, this petition is allowed. The impugned orders dated 17.3.1989 and 15.4.1995 passed by

respondent No.1 are hereby quashed and set aside and the order dated 19.6.1985 passed by the Competent Authority at Surat is hereby restored. It is hereby declared that the petitioners are not holding any land in excess of the ceiling limit. Rule is accordingly made absolute with no order as to costs.

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